

FILE COPY

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST

GREGORY C. SKELDING, D.D.S.,  
RESPONDENT

FINAL DECISION  
AND ORDER  
LS8806081DEN

The State of Wisconsin, Dentistry Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Hearing Examiner, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Hearing Examiner, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Dentistry Examining Board. Let a copy of this order be served on the respondent by certified mail.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated this 3 day of March, 198<sup>9</sup>.

Kathleen A. Kelly, DDS  
Kathleen Kelly, Chair  
Dentistry Examining Board

RJM:gad  
BDLS-238

## NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

### 1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Dentistry Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

### 2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Dentistry Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Dentistry Examining Board.

The date of mailing of this decision is March 6, 1989.

WLD:dms  
886-490

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	PROPOSED DECISION
GREGORY C. SKELDING, D.D.S.,	:	CASE NO. LS8806081DEN
RESPONDENT	:	

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The parties to this proceeding for purposes of sec. 227.53 Wis. Stats.,  
are:

Gregory C. Skelding, D.D.S.  
Route 1, Box 207  
Princeton, WI 54968

Dentistry Examining Board  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

The Complaint in the above-captioned matter was filed on June 6, 1988.  
The Respondent's Answer was filed on July 6, 1988. A prehearing conference  
was held on July 13, 1988.

FINDINGS OF FACT

1. Gregory C. Skelding, D.D.S., respondent herein, of Route #1, Box 207, Princeton, Wisconsin 57968, is a dentist duly licensed to practice dentistry in the State of Wisconsin. Dr. Skelding's license, which bears the number 2536, was issued June 25, 1980.

2. A Complaint, dated June 6, 1988, and a Notice of hearing were filed in this matter alleging that Dr. Gregory C. Skelding engaged in conduct which indicates a lack of knowledge of, an inability to apply, or the negligent application of, principles or skills of the profession of dentistry.

3. On August 19, 1988, complainant's attorney filed a Motion to Dismiss, with an attached Affidavit, on the grounds that complainant would be unable to carry the burden of proof in this disciplinary proceeding. A copy of the Motion to Dismiss and Affidavit are attached hereto and incorporated herein.

CONCLUSIONS OF LAW

The Dentistry Examining Board has jurisdiction in this matter pursuant to secs. 447.02 and 447.07(3) Wis. Statutes.

ORDER

NOW, THEREFORE, IT IS ORDERED that the complaint dated June 6, 1988, against Dr. Gregory C. Skelding shall be, and hereby is, dismissed.

OPINION

The Affidavit attached to complainant's Motion to Dismiss indicates that the testimony to be provided in this proceeding will be insufficient to carry the burden of proof necessary to establish a disciplinary violation. Accordingly, the examiner agrees that the Complaint dated June 6, 1988 should be dismissed.

Dated this 1st day of September, 1988.

Respectfully submitted,

Ruby Jefferson-Moore  
Ruby Jefferson-Moore  
Hearing Examiner

RJM:gad  
BDLS-237

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

GREGORY C. SKELDING, D.D.S.,  
RESPONDENT.

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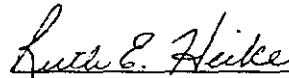
MOTION TO DISMISS

TO: Ruby Jefferson-Moore  
Room 171  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

Stephen O. Murray  
Bell, Metzner and Gierhart, S.C.  
222 West Washington Avenue  
P.O. Box 1807  
Madison, WI 53701-1807

Complainant, by his attorney, hereby moves the hearing examiner to  
dismiss the above captioned proceeding.

Respectfully submitted this 19<sup>th</sup> day of August, 1988.



Ruth E. Heike  
Attorney  
Division of Enforcement  
Department of Regulation and Licensing

REH:dms  
DOEATTY-285

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

GREGORY C. SKELDING, D.D.S.,  
RESPONDENT.

AFFIDAVIT IN SUPPORT  
OF MOTION TO DISMISS

Ruth E. Heike, being first duly sworn on oath, deposes and states as follows:

1. That a complaint was filed and served on Respondent on June 8, 1988.
2. That in order to prove the complaint, it is essential that complainant obtain the testimony of Jill Draeger's parents.
3. That on August 17, 1988, Jill Draeger's parents informed her that they do not remember the facts surrounding the incident in question and that they will not in any way cooperate with a proceeding against Dr. Skelding.
4. That the above information is true to the best of my knowledge and belief.

*Ruth E. Heike*  
Ruth E. Heike

Subscribed and sworn to before  
me this 19th day of August, 1988.

*Jonathan Becker*  
Notary Public  
My Commission is permanent.

REH:dms  
DOEATTY-286

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

GREGORY C. SKELDING, D.D.S.,  
RESPONDENT.

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REMAND ORDER AND MEMORANDUM  
LS 88060081 DEN

TO: Stephen O. Murray  
Bell, Metzner, Gierhart & Moore, S.C.  
Attorneys at Law  
222 West Washington Avenue  
Madison, WI 53701-1807

Ruth E. Heike  
Attorney at Law  
Department of Regulation & Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935

On September 1, 1988, the hearing examiner in this matter, Ruby Jefferson-Moore, issued a proposed decision in which she recommended that the above-captioned matter be dismissed upon the Complainant's motion and supporting affidavit asserting inability to proceed because two witnesses refuse to cooperate with the prosecution of the case. The Board, having reviewed the Proposed Decision and pleadings in this matter, renders the following Order and Memorandum:

ORDER

IT IS HEREBY ORDERED that the recommendation by the hearing examiner that this proceeding be dismissed is not accepted, and that the matter is REMANDED to the examiner for further proceedings and consideration.

MEMORANDUM

This matter comes before the Dentistry Examining Board pursuant to a Proposed Decision filed by the hearing examiner recommending that this matter be dismissed. The basis for the recommendation is a motion and affidavit by Ruth Heike, attorney for Complainant, asserting that two of the witnesses to the events giving rise to the Complaint have declared a failure of memory as to the facts and an intention not to cooperate in any way with a proceeding against Respondent. Attorney Heike further stated that the testimony of these two witnesses is essential to the proof of the allegation of the complaint.

It is the opinion of the Board that the assertions in the affidavit filed in support of the motion to dismiss do not support each other, or the motion to dismiss, in light of the allegations of the Complaint. The Complaint alleges that Respondent prescribed a drug for a five year old dental patient, that the patient took the drug as prescribed; that she afterwards

became pale, began staggering, and seeing double; that the symptoms reported are an unacceptable reaction to the drug prescribed, and that Respondent failed to act appropriately in response to the unacceptable reaction. The assertions of the affidavit are that the patient's parents do not recall the events, and that their testimony is essential to the prosecution of the Complaint.

There is nothing in the pleadings to indicate that the patient's parents are the only witnesses to all or any of the material events. Nor is there anything in the pleadings to indicate that the child is not competent to testify. Nor is there anything in the pleadings to indicate that neither the parents nor the child spoke to anyone about the events alleged. Because the rules of evidence permit the use of hearsay testimony in cases where the declarant claims a lack of memory or refuses to testify, Wis Stat. sec. 908.04, 908.045, it is not at all evident from the pleadings that the patient's parent's testimony is essential from the parent's lips at the hearing of this Complaint. Because the rules of evidence permit the use of hearsay evidence in numerous other instances when the declarant is available, Wis. Stat. sec. 908.03, it is not any more evident that the parent's active cooperation with the Complainant at the time of the hearing is essential to proving the allegations.

The pleadings indicate substantial dispute as to the facts, and also as to the propriety of Respondent's prescription practices affecting the patient here. It is apparent from the answer that Respondent is concerned that other grounds for discipline arising out of this same course of events might be alleged in a later complaint. Because the complaint alleges facts which require evidence from a pharmacist, a physician, or dentist specializing in pediatric dentistry, the Board infers that the necessary evidence is within the state's control. Any other inference would require a presumption that the state filed the complaint without performing the ethically necessary adequate investigation.

It is further the Board's opinion that a dismissal of this proceeding at this point could unfairly prejudice the Respondent by leaving him open to later complaints arising out of the same incident. The pleadings indicate that the basis of the complaint is a dispute over the propriety of one facet of Respondent's prescription practice with this patient. The complaint alleges that the patient had an "unacceptable reaction" to the drug prescribed, but does not allege a cause of that reaction, whether it was an inappropriate drug, inappropriate dose, unforeseeable allergic reaction, or other cause. The pleadings indicate that the choice of drug or dosage chosen may also be grounds for a conclusion that Respondent violated sec. 447.07(3)(g), Wis. Stats. It would be unfair to allow the State to dismiss this action only to begin another later, based on the records now in the State's control and expert testimony of the pharmacological aspects of this incident. It is better practice to require the State to amend its complaint to incorporate its other grounds for discipline, if any, arising out of this incident so that the Respondent is permitted the efficiency and finality of defending against one action rather than duplicative alternatives in series.



Finally, it is the Board's opinion that a dismissal would prejudice the public by foreclosing an examination of the merits of this complaint without sufficient justification. The allegations are serious, and, if true, a threat to public health, safety, and welfare. If the allegations are unfounded, then the public has a right to know that, too. Presumably, the state believes the complaint is supported by the facts developed in an investigation, or there would be no ethical reason to file the complaint. Because of the public interest in a full examination of the circumstances of a complaint of this sort, the State created the Board and authorized the use of the hearing examiner to judge the circumstances of this type of complaint. The Complainant's attorney has the responsibility of determining whether to file a complaint, but once the complaint is filed and disciplinary proceedings begun, the Complainant's attorney no longer has unfettered authority to dismiss the case. Burling v. Burling, 275 Wis. 612 (1957); State ex rel. Freeman Printing Co. v. Luebke, 36 Wis. 2d 298 (1967); Monson v. Monson 85 Wis. 2d 794, 803 (1978).

It is the function of the hearing examiner and the Board, not the attorneys arguing the case, to determine whether the allegations have been proven by a preponderance of the evidence. On the record before it, the Board is not satisfied that the testimony of the patient's parents at a future hearing is essential to proving the complaint. An affidavit supporting a motion to dismiss on the grounds that a witness will no longer cooperate in the proceeding must show some reason why that witness' continued cooperation is essential. Therefore, the recommendation is deemed inappropriate and is not accepted by the Board.

The Board remands this matter to the examiner for further proceedings and consideration consistent with this memorandum.

Dated at Madison, Wisconsin this 15<sup>th</sup> day of November, 1988.

STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD

Kathleen A. Kelly, D.D.S.  
Kathleen Kelly, D.D.S.

KK:JP:gad  
BDLS-331

BEFORE THE STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST :

GREGORY C. SKELDING, D.D.S., :  
RESPONDENT. :

NOTICE OF FILING  
PROPOSED DECISION  
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To: Stephen O. Murray  
Bell, Metzner, Gierhart & Moore, S.C.  
Lawyers  
222 West Washington Avenue  
P. O. Box 1807  
Madison, Wisconsin 53701-1807

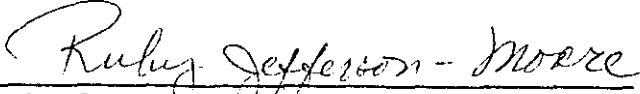
Ruth E. Heike  
Attorney at Law  
Department of Regulation and Licensing  
Division of Enforcement  
P. O. Box 8935  
Madison, Wisconsin 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Dentistry Examining Board by the Hearing Examiner, Ruby Jefferson-Moore. A copy of the Proposed Decision is attached hereto.

If you are adversely affected by, and have objections to, the Proposed Decision, you may file your objections, briefly stating the reasons and authorities for each objection, and argue with respect to those objections in writing. Your objections and argument must be submitted and received at the office of the Dentistry Examining Board, Room 176, Department of Regulation and Licensing, 1400 East Washington Avenue, P. O. Box 8935, Madison, Wisconsin 53708, on or before September 7, 1988.

The attached Proposed Decision is the Examiner's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision together with any objections and arguments filed, the Dentistry Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 15<sup>th</sup> day of September, 1988.

  
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Ruby Jefferson-Moore  
Hearing Examiner

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST

GREGORY C. SKELDING, D.D.S.,  
RESPONDENT

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PROPOSED DECISION  
CASE NO. LS8806081DEN

The parties to this proceeding for purposes of sec. 227.53 Wis. Stats.,  
are:

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Route 1, Box 207  
Princeton, WI 54968

Dentistry Examining Board  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

Department of Regulation and Licensing  
Division of Enforcement  
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The Respondent's Answer was filed on July 6, 1988. A prehearing conference  
was held on July 13, 1988.

FINDINGS OF FACT

1. Gregory C. Skelding, D.D.S., respondent herein, of Route #1,  
Box 207, Princeton, Wisconsin 57968, is a dentist duly licensed to practice  
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filed in this matter alleging that Dr. Gregory C. Skelding engaged in conduct  
which indicates a lack of knowledge of, an inability to apply, or the  
negligent application of, principles or skills of the profession of dentistry.

3. On August 19, 1988, complainant's attorney filed a Motion to  
Dismiss, with an attached Affidavit, on the grounds that complainant would be  
unable to carry the burden of proof in this disciplinary proceeding. A copy  
of the Motion to Dismiss and Affidavit are attached hereto and incorporated  
herein.

CONCLUSIONS OF LAW

The Dentistry Examining Board has jurisdiction in this matter pursuant to secs. 447.02 and 447.07(3) Wis. Statutes.

ORDER

NOW, THEREFORE, IT IS ORDERED that the complaint dated June 6, 1988, against Dr. Gregory C. Skelding shall be, and hereby is, dismissed.

OPINION

The Affidavit attached to complainant's Motion to Dismiss indicates that the testimony to be provided in this proceeding will be insufficient to carry the burden of proof necessary to establish a disciplinary violation. Accordingly, the examiner agrees that the Complaint dated June 6, 1988 should be dismissed.

Dated this 1st day of September, 1988.

Respectfully submitted,

Ruby Jefferson-Moore

Ruby Jefferson-Moore  
Hearing Examiner

RJM:gad  
BDLS-237

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

GREGORY C. SKELDING, D.D.S.,  
RESPONDENT.

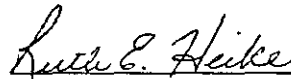
MOTION TO DISMISS

TO: Ruby Jefferson-Moore  
Room 171  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

Stephen O. Murray  
Bell, Metzner and Gierhart, S.C.  
222 West Washington Avenue  
P.O. Box 1807  
Madison, WI 53701-1807

Complainant, by his attorney, hereby moves the hearing examiner to  
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Respectfully submitted this 19<sup>th</sup> day of August, 1988.



Ruth E. Heike  
Attorney  
Division of Enforcement  
Department of Regulation and Licensing

REH:dms  
DOEATTY-285

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

GREGORY C. SKELDING, D.D.S.,  
RESPONDENT.

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AFFIDAVIT IN SUPPORT  
OF MOTION TO DISMISS

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2. That in order to prove the complaint, it is essential that complainant obtain the testimony of Jill Draeger's parents.

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4. That the above information is true to the best of my knowledge and belief.

*Ruth E. Heike*  
Ruth E. Heike

Subscribed and sworn to before  
me this 19th day of August, 1988.

*Jonathan Becker*  
Notary Public  
My Commission is permanent.

REH:dms  
DOEATTY-286